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(including coversheet)To: FCC International Bureau
Name of OfficeDate: 10/31/97Facsimile Number: (202) 418-2824Attn: Regina Keeney c/o Joanna Lowry and Doug Klein
Name Room TelephoneFrom: FBI

Name of Office

Subject: Foreign Participation in the United States Tele-
communications Market (IB Docket No. 97-142)Special Handling Instructions: Hand CarryOriginator's Name: G. WarrennerTelephone: (202) 324-2005Originator's Facsimile Number: (202) 324-2497Approved: PT/gwBrief Description of Communication Faxed: FBI's position regarding 310 (b) (4) and
and foreign investment

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Federal Bureau of Investigation

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Washington, D. C. 20535

October 31, 1997

Ms. Regina M. Keeney
Chief, International Bureau
Federal Communications Commission
Washington, D.C. 20554

RE: IN THE MATTER OF RULES AND POLICIES ON FOREIGN
PARTICIPATION IN THE UNITED STATES TELECOMMUNICATIONS
MARKET (IB DOCKET NO. 97-142)

Dear Ms. Keeney:

The purpose of this letter is to respond to your staff's request for supplemental public comments of the Federal Bureau of Investigation concerning the above-referenced Commission proceeding. Specifically, your staff has asked the FBI to comment on a question that was not presented in the June 4, 1997 Notice of proposed Rulemaking that initiated this proceeding: Whether the Commission should allow common carrier radio licensees and applicants to disregard investments of up to five percent in publicly traded shares when calculating whether foreign investment in such a United States corporation exceeds 25 percent, triggering public interest review by the Commission under 47 U.S.C. § 310(b)(4).

This approach would, in essence, represent a Commission determination under § 310(b)(4) that, as a categorical matter, foreign investments of up to five percent in publicly traded shares of a United States telecommunications corporation cannot present a public interest concern. Because we do not believe such a determination would be sound, the FBI recommends that the Commission not permit such investments to be disregarded.

Although there are instances when individual foreign investments of up to five percent do not present public interest concerns, this by no means is categorically the case. For example, six separate five percent investments from six (actually or apparently) separate foreign investors could create a degree of control or influence over a United States telecommunications carrier that would be contrary to United States national security and law enforcement interests if, for example, each of the investors had links to narcotics organizations, terrorist groups, or hostile foreign intelligence services. National security and law enforcement concerns would be particularly acute if the investors operated in tandem with one another. Under such facts,

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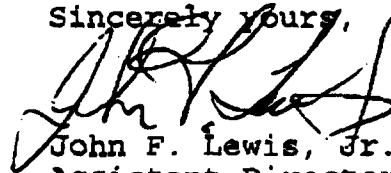
Ms. Regina M. Keeney
Chief, International Bureau

the corporation would be more than 25 percent foreign-owned triggering § 310(b)(4) public interest review under current practice. Under the new approach being considered, however, the corporation would not be subject to such review when the statutory 25 percent threshold was crossed.

Stated in the vernacular of § 310(b)(4), we do not believe it would be a proper exercise of the Commission's discretion for the Commission to effectively prevent itself from ever "find[ing] that the public interest will be served by the refusal or revocation of ... a [common carrier radio] license" in such circumstances. That, however, is precisely what the new approach under consideration would do." Accordingly we ask that this approach not be adopted. We believe the proper approach is to continue to do what we understand Commission staff believes should be done in the § 214 context: Aggregate all investments --including individual investments of less than five percent -- when determining whether 25 percent foreign ownership has been achieved. Given that this approach is deemed feasible in the § 214 context, it should remain feasible in the § 310(b)(4) context as well.

We appreciate the opportunity to provide you with our views on this matter and the attention the Commission, you, and your staff have devoted to the concerns we have raised in this proceeding.

Sincerely yours,



John F. Lewis, Jr.
Assistant Director in Charge
National Security Division

We recognize that the "five percent or less" idea would be limited to § 310(b)(4) applicants and licensees and would not apply to certificates issued under 47 U.S.C. § 214. However, § 214 by its terms excludes certain foreign ownership scenarios that could present national security and/or law enforcement concerns. See, e.g., § 214(a), first proviso (excluding from § 214 any "line within a single State" that is not part of an interstate line). Moreover, § 214 does not cover providers of exclusively wireless service. In these and other situations not covered by § 214, the national security and law enforcement communities would need to rely upon § 310(b)(4) (assuming the applicant or licensee was providing any of its service by radio transmission) to address foreign ownership concerns.